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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,783	04/01/2004	Helmut D. Link	246472006600	4946

7590 03/21/2006
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EXAMINER

REIMERS, ANNETTE R

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/814,783	Applicant(s) LINK ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 and 24 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salib et al. (US Patent Number 5,258,031) in view of Morris et al. (WO 02/45592). Salib et al. disclose a cervical intervertebral prosthesis, 10, comprising two cover plates, 20 and 22, configured to be connected to adjacent vertebral bodies, and a prosthesis core, 46, which forms an articular joint, 26, with one of the cover plates (see figure 1). Furthermore, one of the cover plates is provided with a limit stop surface, e.g. 30, facing in a dorsal direction relative to the vertebral bodies (see figure 1). Moreover, the cover plates have abutment surfaces configured to lie against associated end plates of the vertebral bodies formed by transverse flanges, e.g. 50, on ventral edges of the cover plates relative to an implanted position.

Salib et al. disclose the claimed invention except a circular securing plate, separate from and not connected to the cover plates, which secures only one of the cover plates and is configured to be fastened to a ventral surface of the one of the vertebral bodies. Morris et al. discloses a circular securing plate, which is capable of

Art Unit: 3733

being separate from and not connected to the cover plates, is capable of securing only one of the cover plates, and is configured to be fastened to the ventral surface of the one of the vertebral bodies (see figures 1C, 3 and 4, and page 3, lines 16-21). In addition, Morris et al. teaches the use of a securing plate "to reduce the likelihood of expulsion or retropulsion of an intervertebral implant from between adjoining vertebrae during normal patient activity, without inhibiting insertion of the implant into the intervertebral space" (see page 3, lines 7-10). It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Salib et al. with a circular securing plate, in view of Morris et al., in order to reduce the likelihood of expulsion or retropulsion of an intervertebral implant from between adjoining vertebrae during normal patient activity, without inhibiting insertion of the implant into the intervertebral space.

Claims 3, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salib et al. (US Patent Number 5,258,031) in view of Morris et al. (WO 02/45592) and further in view of Van Hoeck et al. (U.S. Patent Publication Number 2005/0187631). Salib et al., in view of Morris et al., disclose the claimed invention except for the securing plate being biodegradable. Van Hoeck et al. disclose a prosthetic device comprising a biodegradable securing plate, 30 (see figure 1a) and teaches that the plate is composed of a material that is adapted to lose substance, degrade, decay or dissolve gradually over time (see paragraph 0024). It would have been obvious to one skilled in the art at the time the invention was made to construct the prosthetic device of Salib et al., in view of Morris et al., with the securing plate being biodegradable, in view of Van

Hoeck et al., in order to provide a securing plate that would be composed of a material adapted to lose substance, degrade, decay or dissolve gradually over time.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the prosthetic device of Salib et al., in view of Morris et al., with the securing plate being made of a biodegradable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

Applicant's arguments filed on December 28, 2005 with respect to claims 1-4 and 6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3733

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER